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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-196649

DATE: January 9, 1980

MATTER OF: Western Microfilm Systems/Lithographics

DIGEST:

1. [Bidder's failure to acknowledge IFB amendment] may not be waived on basis that bidder did not receive amendment from agency prior to bid opening where evidence does not indicate deliberate attempt by agency to exclude bidder from competition.
2. Failure to acknowledge amendment which materially modifies delivery requirement renders bid nonresponsive.
3. Request for late modification of bid contained in protest letters to GAO is rejected since bid is not otherwise acceptable.

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Western Microfilm Systems/Lithographics (Western) protests the award of a contract to any other firm pursuant to invitation for bids (IFB) No. R6-80-1, issued September 14, 1979, by the United States Department of Agriculture, Forest Service (Agriculture), Portland, Oregon. The IFB solicited for the supply of an estimated 300 TRI compartment, photo map sets. The bidders were cautioned that the estimated number of sets was an approximate figure and that 10 percent more or less could be ordered depending on Agriculture's requirements.

On the October 15, 1979, bid opening four bids were received by Agriculture. Western's low bid (\$48.49 per map set - total \$14,547) was rejected as nonresponsive for failure to acknowledge receipt of amendment No. 2, which decreased the number of map sets to be ordered each week from an estimated average of 25 to an average of 10 and extended the termination date from January 1, 1980, to May 16, 1980.

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Bidder's nonresponsiveness
solicitation specifications
Bid modifications
Contract awards
Protests

Western contends that its failure to acknowledge the amendment should not render its bid nonresponsive since it never received the amendment. In addition, Western believes that amendment No. 2 merely extended the performance period of the contract and, as such, its failure to acknowledge is "an immaterial or inconsequential defect or variation of the bid from the exact requirements of the IFB." Western, citing Federal Procurement Regulations (FPR) § 1-2.405 (FPR circ. 1, Second Edition, June 1964), argues that under these circumstances Agriculture should either give Western the opportunity to cure its failure to acknowledge amendment No. 2 since it is a minor informality or irregularity in the bid or waive such deficiency. FPR § 1-2.405 provides that a defect or variation in a bid is immaterial and inconsequential when its significance as to price, quantity, quality or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured.

Alternatively, Western asks that we consider, pursuant to the Solicitation Instructions and Conditions, paragraph 7, its protest letter, dated October 29, 1979, as a late modification of its bid to include the terms of amendment No. 2. Paragraph 7(d) provides that a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

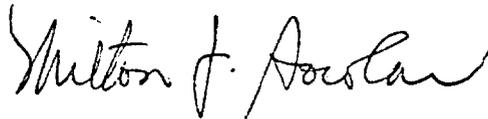
For the reasons set out below, we disagree with the protester's contentions.

If a bidder does not receive and acknowledge a material amendment to an IFB and this failure is not the result of a conscious and deliberate effort to exclude the bidder from participating in the competition, normally, the bid must be rejected as nonresponsive. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2; Mike Cooke Reforestation, B-183549, July 2, 1975, 75-2 CPD 8. Agriculture advises that it mailed amendment No. 2 to all prospective bidders including Western. Based on the record, we have no reason to believe that the failure of Western to receive the amendment was the result of a deliberate attempt on the part of Agriculture to exclude Western from competition.

Our Office has held that failure to acknowledge an amendment to a solicitation which materially affects the IFB requires rejection of the bid as non-responsive and may not be waived as a minor informality. See McKenzie Road Service, Inc., B-192327, October 31, 1978, 78-2 CPD 310. It is our view that amendment No. 2 materially modified the delivery requirements since it extended the termination date approximately 4-1/2 months, from January 1, 1980, to May 16, 1980. In addition, acceptance of Western's bid would not bind Western to perform after January 1.

With respect to Western's alternate argument, that its protest should be considered a late modification, we note that Western's bid was not "otherwise acceptable" and, therefore, cannot be modified. See Strand Aviation, Inc., B-194411, June 4, 1979, 79-1 CPD 389.

The protest is denied.



For The Comptroller General
of the United States